Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of		
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2000 Biennial Regulatory Review-	)	CC Docket No. 00-199
Comprehensive Review of the	)	
Accounting Requirements and	)	
ARMIS Reporting Requirements for	)	
Incumbent Local Exchange Carriers:	)	
Phase 2 and Phase 3	)	

REPLY COMMENTS OF XO COMMUNICATIONS, Inc.

XO Communications, Inc. ("XO") respectfully submits these reply comments in response to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") commencing Phase 2 and Phase 3 of the comprehensive review of its accounting rules and the related reporting requirements for incumbent local exchange carriers ("ILECs").[1] In the NPRM adopted in this proceeding, the FCC commenced Phase 2 to seek comment on further accounting and reporting reform measures that may be implemented in the

[1] In Phase I, the FCC adopted Part 32 accounting rules changes and ARMIS reporting reform measures. Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers:Phase 1, CC Docket No. 99-253, *Report and Order,* 15 Rcd 8690 (2000)(*Phase I Report and Order).*

near term. The FCC also commenced Phase 3, to consider the appropriate indicia for additional accounting deregulation.

In these reply comments, XO contends that the record in this proceeding fails to provide any evidence whatsoever to justify the wholesale removal of the FCC's ILEC accounting and reporting requirements under section 11 of the Communications Act. XO also agrees with those parties filing initial comments that urge the Commission to soundly reject the United State Telephone Association's ("USTA's") proposal to the eliminate vital accounting and reporting requirements for ILECs. Finally, XO maintains that CLECs should not be subject to Section 32.11 of the Commission's rules.

I. THE RECORD FAILS TO PROVIDE EVIDENCE THAT WOULD JUSTIFY THE WHOLESALE REMOVAL OF THE FCC'S ILEC ACCOUNTING AND REPORTING REQUIREMENTS UNDER SECTION 11 OF THE COMMUNICATIONS ACT.

Pursuant to Section 11 of the Communications Act, the Commission initiated this proceeding to examine reform of its accounting and ARMIS reporting requirements for ILECs.

Under the statutory mandate, in order to eliminate such requirements the FCC must first "determine whether any such regulation is no longer necessary in the public interest *as a result of meaningful economic competition between providers of such service.*"[2]

The NPRM and initial comments in this proceeding, however, fail to provide any evidence whatsoever of "meaningful economic competition" for ILEC services that would serve as a reasonable foundation for removing any of the accounting and related reporting requirements for ILECs. Analysis of competition for ILEC services in the NPRM is limited to a quick reference regarding limited Regional Bell Operating Companies ("RBOC") entry into the already competitive long distance market and a brief mention of "recent changes in the telecommunications industry."[3]

XO supports AT&T's contention that, if anything, the FCC's most recent data reveal the general lack of meaningful economic competition for numerous ILEC services.[4] While competitive carriers, such as XO, are making great strides in entering the local market, these inroads fall short of meeting the statutory mandate of "meaningful economic

[2] 47 U.S.C. Section 161. (emphasis added)
[3] NPRM at para. 2.

competition." Rather, ILEC failure to implement the Commission's pro-competitive, market-opening initiatives has perpetuated the lack of meaningful economic competition for a vast majority of consumers in the United States.

The Commission's accounting and related reporting requirements remain an important non-structural safeguard against potential ILEC anti-competitive and discriminatory behavior. If adopted, USTA's proposal to gut the Commission's accounting requirements would strip federal and state regulators of critical data necessary to vigilantly monitor RBOC behavior during the continuing transition towards a fully open and competitive local telecommunications marketplace. XO, therefore, urges the Commission not to assume the existence of a fully open and competitive local market or the need for de-regulation where no concrete evidence exists to support such a conclusion and, indeed, where the Commission's own data reveals a lack of meaningful competition. Accordingly, the Commission should reject most, if not all, of USTA's proposals to roll back accounting and related reporting requirements for ILECs.

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[4] AT&T Comments at 2. Noting that under the FCC's December 2000 Local Competition Report, ILECs continue to control 93 percent of all access lines in the U.S.

II. ELIMINATION OF ACCOUNT DETAILS IS PREMATURE

XO supports state regulators, consumer advocates and fellow competitive carriers in this proceeding that stressed in their initial comments the importance and value of the Commission's Uniform System of Accounts ("USOA") and related reporting requirements, and that questioned the wisdom of abruptly eliminating operations, corporate and administrative expense account details.[5] The National Association of Regulatory Utility Commissioners ("NARUC"), for example, made clear that "…states rely to a great deal on the FCC's Part 32 accounting system and on the information reported in ARMIS."[6] It also noted that "[w]hile it is important for the FCC to continue to streamline and reduce the burdens on the ILECs as the local exchange market transitions to a competitive market, the need to monitor ILECs costs, investments, and cost allocation practices at this time is also important."[7]

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[5] See, AT&T Comments at 2-5; California PUC Comments at 1-2; Florida PSC Comments at 4-11; Idaho PUC Comments at 3-4; Maryland PSC Comments at 3-4; NARUC Comments at 3-4; Ohio Consumers Counsel and NASUCA Comments at 3-9; New York DPS Comments at 1-2; Oregon PUC Comments at 2-4; Utah PSC/ Utah Division of Public Utilities Comments at 1-2.

[6] NARUC Comments at 4.

[7] Id.

These same parties also identified critical regulatory oversight functions that rely heavily on data provided by the Commission's accounting structure. For example, the National Association of State Utility Consumer Advocates ("NASUCA") notes that FCC account information is important in the development of rates for unbundled network elements ("UNEs"). NASUCA stated, in particular, that:

> The initial and continuing monitoring of UNE rates is a crucial aspect of the transition to local competition that has proved difficult for the states. They need every tool available to ensure that UNEs are priced low enough to allow competition but high enough to recover the incumbent carriers' costs. Whether states "could find or develop alternative sources of data for this purpose" is really the wrong question here. The correct question is, *why* should the states find or develop alternative sources of data for this purpose, when this longstanding, familiar source is available.[8]

The Idaho PUC confirms that data from federal accounting records on total company investment and jurisdictional separation factors are the basis for setting rates and universal service support in that state.[9] The New York DPS also notes the role of federal accounting data used

[8] NASUCA Comments at 5.
[9] Idaho PUC Comments at 3.

to set or assess ILEC intrastate depreciation rates.[10] In addition, the Florida PUC points out that without federal cost detail information, regulators will have difficulty in determining or assessing the reasonableness of pole attachment rates.[11] Finally, other key regulatory oversight activities that use this account information include: determination of earnings, calculating lower formula adjustments and exogenous adjustment claims in the context of price cap regulation, assessing access prices, and developing and testing universal service models and other forward looking cost methodologies.

Under FCC rules, ILECs are required to maintain Part 32 accounts at either the Class A or Class B level. Class A has 296 accounts; Class B has 110 accounts. The FCC defines Class A as ILECs with annual revenues at or above the indexed revenue threshold of $114 million. ILECs below that threshold are classified, for accounting purposes, as Class B carriers. In this proceeding, the Commission proposes to eliminate 77 of 296 Class A accounts. It also seeks comment on USTA's proposal to eliminate Class A accounting requirements and allow all companies to account at the Class

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[10] New York DPS Comments at 2.
[11] Florida PSC Comments at 5.

B level. XO supports the commenters that oppose both of USTA's proposals.

A. FCC SHOULD REJECT USTA's PROPOSAL TO ABANDON CLASS A ACCOUNTS FOR ALL ILECS.

i. USTA's CLAIM THAT THE FCC's EXISTING CLASS A REPORTING REQUIREMENTS ARE OVERLY BURDENSOME IS WITHOUT MERIT

XO supports the parties challenging USTA's claim that Class A accounting is too costly and overly burdensome.[12] USTA's contention regarding the burdens associated with Class A accounting is almost laughable. The approximately 300 accounts that comprise "Class A" are already minimal. As the record makes clear, today the largest ILECs maintain between 2,000 to 3,500 accounts in their own internal accounting systems.[13] Compliance with current Class A accounting only requires carriers to aggregate existing account balances up into the approximately 300 accounts in the Class A format.

[12] Florida PSC Comments at 6; Maryland PSC Comments at 4; NARUC Comments at 5;New York DPS Comments at 2.
[13] NARUC Comments at 5.

Today, carriers that are a fraction of the size of the largest ILECs maintain accounts well above the "Class A" 300 account threshold. XO, as a competitive carrier not subject to the Commission's Part 32 requirements and much smaller than the RBOCs, maintains over 1,700 accounts within its internal accounting system. As several state PUCs note, even the smallest ILECs also use Class A accounting in order to obtain Rural Utility Service ("RUS") loans from the Federal government.[14] Finally, the Idaho PUC claims that elimination of the Class A accounting requirements could actually increase ILEC costs because states, such as Idaho, would replace the federal reporting requirements with independent state accounting requirements.[15]

ii. FCC SHOULD REJECT USTA'S PROPOSAL TO CLASSIFY ALL CARRIERS AS CLASS B CARRIERS

XO joins the commenters that oppose or express serious reservations about USTA's proposal to classify all carriers as Class B carriers for accounting purposes.[16] Eliminating Class A accounts would greatly increase the probability that

[14] Florida PSC Comments at 6; Utah PSC Comments at 2.
[15] Idaho PUC Comments at 5.

anti-competitive and discriminatory ILEC behavior go remain undetected. As the Maryland PUC notes, losing the detail provided by Class A accounting requirements would undermine the ability of federal and state regulators to understand the nature of carriers' costs, which is primarily driven by network plant investments.[17]

The record makes clear that the costs of eliminating Class A accounting requirements clearly outweigh any potential benefits associated with adopting Class B for all ILECs. For example:

UNE Ratemaking: In UNE ratemaking proceedings, state commissions typically permit interested parties to submit forward-looking cost data based on cost models. These models rely primarily on disaggregated network plant and expense data. Without sufficient disaggregation, as provided by Class A, incumbent LECs would have an unfavorable advantage in UNE ratemaking proceedings because they would be the only parties with access to disaggregated cost data.[18] High UNE prices resulting from poor accounting data would hamper competition and harm consumers.

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[16] AT&T Comments at 2-3; Florida PSC Comments at 4-5; Maryland PSC Comments at 3-4; NARUC Comments at 5-6; New York DPS Comments at 2; Ohio Consumers' Counsel and NASUCA Comments at 4-5; Oregon PUC Comments at 4

[17] Maryland PUC Comments at 3.

[18] We note that disaggregated expenses at the Class A level, may also be needed for promoting various other pro-competitive purposes, such as to

Central Office Investment: Class B accounting lumps all switching equipment into one account category. Class A, however, recognizes the various types of central office equipment, differentiating, for example digital from analog switches. Use of the aggregated Class B accounting would eliminate the ability of regulators to track investment in different types of switching equipment (e.g., digital, ATM, DSL, etc.). NASUCA, for example, contends that such treatment of switch investment would make "it difficult to ensure that support went to state-of-the-art switching."[19]

Depreciation: Adopting Class B accounting for all carriers would also mean that the FCC would most likely be unable to update the depreciation ranges set forth in its December 1999 Depreciation Order. A flash cut to Class B accounting would result in no plant account data being available for the depreciation range update because the distinctive plant account data would be replaced by summary account data by function. As the New York DPS notes, permitting Class B treatment of all ILECs would jeopardize its ability to conduct depreciation studies and evaluate depreciation reserves.[20] Moreover, without the FCC

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determine costs related to ILEC physical and virtual collocation arrangements.

[19] NASUCA Comments at 5.

[20] NYDPS Comments at 2.

depreciation ranges, state commissions that no longer regulate depreciation will no longer have any depreciation data to use in UNE pricing dockets. Many state UNE pricing proceedings have previously used FCC prescribed depreciation factors in setting UNE rates.[21]

Pole Attachment Rates: Class B accounting uses only one account for all outside cable and wire investment. Class A classifies outside plant into several categories, separating fiber cables from copper, differentiating aerial cable from buried cable, and the various types of conduit. As the Florida PSC notes, Class B accounts will provide no detailed information regarding the construction or makeup of various types of outside plant.[22] Class B accounts incorporate pole and conduit data with fiber, copper, aerial, underground and buried cable data. Under this scenario, federal and state regulators without the cost detail existing under Class A accounting will have great difficulty determining whether an ILEC's pole attachment rate is just and reasonable.

iii. STREAMLINING CLASS A ACCOUNTS IS PREMATURE

[21] Florida PSC Comments at 5.

XO agrees with the commenters that oppose or express concern regarding the elimination of plant specific, plant non-specific, customer, corporate and administrative expense account details associated with Class A reporting.[23] XO has concerns regarding the proposed streamlining of Class A Accounts similar to the concerns outlined above regarding USTA's proposed transition to Class B accounting. XO agrees with the California PUC that it is premature to streamline aggressively the accounting and reporting requirements for Class A ILECs, before effective competition has been demonstrated in the local market. As the California and Utah PUCs note, the loss of accounting detail would constrain the ability of state regulatory commissions that rely on Class A detail to analyze Class A carriers' operations. XO also agrees with the California PUC that "the loss of the current level of detail would therefore have a permanent adverse effect on the ability of the regulators not only to regulate current programs, but also to intelligently oversee those new programs contemplated in the future as the industry evolves."[24]

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[22] Id. at 4.

[23] California PUC Comments at 1-2; Florida PSC Comments at 4; Utah Public Service Commission Comments at 1

[24] California PUC Comments at 2.

Finally, XO supports the California PUC's request to the Commission that if the FCC decides to adopt the elimination of the USOA accounts in Appendix 3 that, at a minimum, the FCC should require ILECs (for three years) to map the eliminated accounts to allow for the reconstruction of the recorded data back to the same level of account detail prior to elimination.

III. THE FCC SHOULD NOT ELIMINATE THE CONTINUING PROPERTY RECORDS REQUIREMENT

XO opposes USTA's proposal to eliminate the existing Continuing Property Records ("CPRs") requirements.[25] As the record indicates in this proceeding, elimination of the existing CPR requirements would be problematic. CPR records by definition ensure that the largest accounts in the USOA, the network plant accounts, accurately reflect ILEC assets actually in service. Inaccurate or non-existent CPRs raise significant questions regarding the accuracy of ILEC cost data. State PUCs use CPR data for jurisdictional separations purposes and to perform cost allocation studies.

[25] Florida PSC Comments at 14; Maryland PSC Comments at 4; NARUC Comments at 6; Comments of the Public Service Commission of Wisconsin at 8.

Without the CPR data, the PUCs' ability to perform such functions will be greatly impaired. Moreover, elimination of the CPR requirements could also negatively impact the federal universal service program because the existing methodology used to calculate universal service support is based on historical cost data derived, in part, from the CPR process.

Finally, the timing of the proposal is particularly problematic given the results of the FCC's recent ILEC CPR audits. As the Public Service Commission of Wisconsin points out, the FCC audits revealed serious problems with ILEC basic property records.[26] While the FCC decided not to pursue its CPR audit investigation (even after auditors found that nearly $5 billion of ILEC plant could not be accounted for), it did note in its order closing the audit investigation that it remained concerned about the poor recordkeeping by the ILECs. XO agrees with the Wisconsin PSC that before the FCC even considers eliminating any CPR requirement, it must, at a minimum, ensure that it has publicly addressed the compliance problems identified in its CPR audits.

[26] Comments of the Public Service Commission of Wisconsin at 8.

IV. COMPETITIVE LOCAL EXCHANGE CARRIERS ("CLECs") SHOULD NOT BE SUBJECT TO SECTION 32.11

The NRPM notes that USOA requirements currently apply to incumbent LECs only.[27] The Commission, however, raises the issue of "whether section 32.11 should be amended so that its requirements explicitly pertain only to incumbent LECs,…, and any other companies that the Commission designates by order."[28]

Rather than focusing on whether the USOA should apply to new entrant carriers whose investment is determined solely by market forces, XO urges the Commission to continue to devote its limited resources to ensure the effectiveness of its existing accounting safeguards to protect against potential discrimination and cross-subsidization by those carriers with market power in the local telecommunications marketplace. The Commission's established cost accounting system, affiliate transaction rules (Part 32) and cost allocation rules (Part 64) have long served the public interest and protected ratepayers by enhancing the regulators ability to detect anti-competitive cross-subsidies by ILECs. Moreover, as highlighted above, that

[27] NPRM at para. 44.

same cost accounting system today enables regulators to continue to serve the public interest by promoting competition (e.g., ensuring just and reasonable ILEC rates in the UNE and pole attachment ratemaking process).

By definition, CLECs, such as XO, enter the local exchange and exchange access markets in competition with other providers and without the benefits associated with a legacy guaranteed rate of return or control of bottleneck facilities.

The Commission's inquiry into whether it should broaden the scope of its legacy regulation to include new entrant carriers asks the wrong question. Instead of expanding the regulatory net to capture participants whose investment is purely governed by market forces, we urge the FCC to redirect its energies and ask how it can strengthen its accounting and other enforcement mechanisms to ensure that the ILECs faithfully comply with all of the Commission's pro-competitive market opening initiatives.

III. CONCLUSION

For the foregoing reasons, the Commission should: i) reject USTA's proposal to abandon Class A accounts for all

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[28] Id.

ILECs; ii) find that USTA's claim that the FCC's existing Class A reporting requirements are overly burdensome is without merit; iii) reject USTA's proposal to classify all carriers as Class B carriers; iv) not adopt the proposed streamlining for Class A accounts; v) not eliminate the continuing property records requirement; and vi) not subject CLECs to the requirements in 47 C.F.R. 32.11.

Respectfully submitted,

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